

Books

A biography of Thurgood Marshall, who 'came to personify the NAACP'

By Maurice C. Taylor

Thurgood Marshall changed forever the face of public institutions in Maryland. Charles Houston, his law professor at Howard University, taught that black lawyers should become "social engineers" and use the practice of law to reform society. As a young attorney in Maryland, Mr. Marshall helped to engineer the desegregation of Maryland's public beaches (*Dawson v. Mayor and City Council of Baltimore City*); public golf courses (*Law v. Park Board*); the state's training schools for boys (*State Board of Public Welfare v. Myers*); the University of Maryland's School of Law (*Murray v. University of Maryland*), and its school of nursing (*McCready v. Byrd*). In 1937, Mr. Marshall challenged segregated education in Baltimore County in a case involving Catonsville High School (*Williams v. Zimmerman*).

After sharpening his social engineering skills in Maryland, this native of West Baltimore joined the staff of the National Association for the Advancement of Colored People at its headquarters in New York, and he subsequently became the NAACP's chief counsel. Although Mr. Marshall received his greatest recognition for his 1954 Supreme Court victory in *Brown v. Board of Education*, he in fact won 29 of the 32 cases he argued as an attorney before the court. In 1965, President Lyndon B. Johnson appointed him U.S. Solicitor General, and Mr. Marshall in turn won 14 of the 19 cases he took to the Supreme Court on behalf of the United States. In all, Thurgood Marshall won 43 of the 51 cases he had argued before the court before his appointment there in 1967. He retired from the court 24 years later, in 1991.

A biography of Thurgood Marshall that rises to the level of his accomplishments would help us un-

**THURGOOD MARSHALL:
WARRIOR AT THE BAR, REBEL
ON THE BENCH.**
Michael D. Davis
and Hunter R. Clark.
Birch Lane Press.
400 pages. \$24.95.

derstand how constitutional law was rewritten by the cases Mr. Marshall brought before the Supreme Court. We would also see how this revision of constitutional law nourished the hope and fed the courage of the leaders of the civil rights movement.

Regrettably, "Thurgood Marshall: Warrior at the Bar, Rebel on the Bench" offers few insights into the life and accomplishments of the man that could not be obtained from a rather cursory perusal of newspaper headlines. Information about Mr. Marshall is gathered largely from secondary sources such as court documents, government reports, letters and other memorandums. I found no indication that Mr. Marshall had volunteered any information for this biography.

Rather, it appears that the authors mostly use this book to display their collection of novel, curious and quirky banalities about Mr. Marshall. Michael D. Davis, a former reporter for *The Evening Sun*, and Hunter R. Clark may receive some notice for being among the first to publish a biography of him, but they have lost the opportunity to achieve acclaim for literary excellence.

Numerous problems haunt this text. The organization of the content is choppy, repetitive and somewhat difficult to follow. Reading the events and ideas flung haphazardly across the biography's 24 chapters is like wading through intellectual confetti.

Sometimes the events and ideas are only tangentially related to Mr. Marshall. In Chapter 23, the authors

Maryland State Archives S455-D012170A.TIF



Thurgood Marshall joined the Supreme Court in 1967.

reprint a poem having nothing to do with Thurgood Marshall; "Keep the Faith" was written by former Justice William O. Douglas on the occasion of his own retirement from the Court. The last chapter is entitled "Marshall's Legacy," yet the authors spend several pages discussing the background and philosophy of the newest justice, Clarence Thomas.

Their conclusion in Chapter 1 that while on the Supreme Court Mr. Marshall "turned from a quick-witted verbal combatant to a philosophical joker" is simply not supported by the consistently well-crafted legal opinions he wrote during his tenure on the court. I do not believe the characterization is malicious, but it does foretell the authors' tendency throughout the text to offer naive explanations for the complex social forces of race and class with which Mr. Marshall wrestled throughout his personal and professional career.

In Chapter 24, for example, the authors note that Mr. Marshall "came to personify the NAACP" but that "a lot of things have changed" since he began his legal career. They conclude that the election of black

mayors by white majorities in some cities "indicates that white America is beginning to realize its moral obligation to assure fairness and equality for all citizens."

This conclusion represents a leap of faith over a chasm of contrary evidence. Certainly, the recently nationally publicized actions of white police officers brutally beating African-American motorists Rodney King in Los Angeles and Malice Green (who was beaten to death) in Detroit are contrary to the notion of a "moral obligation" among whites "to assure fairness and equality for all citizens."

One of the major problems with this text is the authors' relentless pursuit of trivia. After introducing Mr. Marshall's second wife, Cecilia Suyat, in Chapter 14, they remind us on two occasions that she is Hawaiian-born and of Philippine ancestry. Chapter 20, "A House Becomes a Home," is little more than a recitation of Mr. Marshall's tastes in friends, food and entertainment. The authors reprint his secret recipe for steaming Maryland blue-claw crabs and we are also informed that "He knew how to eat them, too. . . ."

The fixation on frivolity is compounded when the authors attempt to explain the relevance of Mr. Marshall's light skin tone and his colorful use of the English language. We are told in Chapter 7 that "the lines of exclusivity within high yellow societies of Baltimore and Washington were as sharply drawn as those that existed between black and white society. . . . Parents encouraged their children to socialize and marry within this select group; when birthday parties were held, nearly all of the children who attended were fair-skinned."

While the authors' observations may have some validity, the relevance of skin tone in the black community is more complex than deciding on the guest list for a birthday

party. The larger problem for this biography, though, is that the authors fail to demonstrate that skin tone is in any way relevant to the personal philosophy or professional conduct of Thurgood Marshall.

The first half of this biography does offer insights into Mr. Marshall's philosophy and conduct. We learn in chapters 5 and 7 of the Margold plan: "The Margold strategy was not to attack the constitutionality of segregation itself, but to challenge its legality as practiced. . . ."

Mr. Marshall's genius was in implementing this strategy. He established Supreme Court precedents supporting the desegregation and public accommodations by standing the "separate but equal" doctrine of *Plessy v. Ferguson* on its head.

Thus, Mr. Marshall did not begin his initial assault on segregation by attempting to convince the justices that *Plessy* was wrongly decided. Rather, by documenting, in a number of cases preceding *Brown*, the inequality in racially separate public facilities, he convinced the court that the states were in violation of the law because of their failure to uphold *Plessy*. In the end, the loudest noise heard in 1954 was the "separate but equal" doctrine collapsing under the weight of its own contradictions.

Thurgood Marshall's contribution to the demise of the "separate but equal" mythology in Maryland and in America is certainly worthwhile reading. But a biography of him should disclose substantially more of the interrelationship between the personal philosophy and professional conduct of such an important figure. This book contains too much trivia and too little insight to qualify as a seminal biography of Thurgood Marshall.

Dr. Taylor is assistant dean of the College of Arts and Sciences at Morgan State University.

A Pioneer In the Halls Of Justice

DREAM MAKERS, DREAM BREAKERS **The World of Justice Thurgood Marshall**

By Carl T. Rowan
Little, Brown. 475 pp. \$24.95

THURGOOD MARSHALL **Warrior at the Bar, Rebel on the Bench**

By Michael D. Davis and Hunter R. Clark
Birch Lane. 400 pp. \$24.95

THURGOOD MARSHALL: Justice for All

By Roger Goldman with David Gallen
Carroll & Graf. 509 pp. \$24.95

By Nadine Cohodas

WHEN LYNDON JOHNSON nominated Thurgood Marshall for the Supreme Court in 1967, he called it "the right thing to do, the right time to do it, the right man and the right place."

Three books tracing Marshall's half-century as lawyer, solicitor general and Supreme Court justice help explain what Johnson meant, particularly for those who know little about Marshall's long career before his ascent to the high court. The nation's leading civil-rights lawyer for 25 years, Marshall took his seat on a court previously made up only of white men—a court that by virtue of his efforts had dismantled the legal underpinnings of segregation. The symbolism in Johnson's selection was unmistakable.

As the NAACP's chief lawyer, Marshall had defended the poor dubiously charged with murder and soldiers wrongly accused of misconduct by their white superiors. He represented black students seeking to enter all-white universities and children seeking a better education than whatever was available in their rickety shack schoolhouses. In the 1954 *Brown v. Board of Education* decision—arguably Marshall's most famous case—the Supreme Court declared segregated schools unconstitutional, the critical step in toppling a host of other racial barriers.

Marshall's life, from his Baltimore boyhood to his NAACP practice and his days of glory and disillusionment on the Supreme Court, is as sobering as it is inspiring—a reminder of the frequent brutalities and indignities black Americans suffered under this country's racial caste system.

What is remarkable is that Marshall never exploded in rage over what he saw and experienced as he represented the disfranchised in courtrooms around the country. He kept his feelings in check, but the anger, often masked by acerbic and occasionally ribald humor, was never far from the surface. Toward the end of his career, anger was apparent in his harsh dissents against majority decisions that he believed were wrong-headed and devastating to the changes he had worked so hard to make.

During the bicentennial of

—Continued on page 10

Nadine Cohodas is a former senior writer for Congressional Quarterly and author of the forthcoming book "Strom Thurmond and the Politics of Southern Change."

Justice Thurgood Marshall

Continued from page 1

the Constitution in 1987, many suggested that the Supreme Court sit in Philadelphia, as it had two centuries before. Marshall derided the idea, pointedly observing that "if you're gonna do what you did two hundred years ago, somebody's going to have to give me short pants and a tray so I can serve coffee."

The framers' government was "defective from the start," Marshall asserted, pointing out that only after several amendments, a civil war and "momentous social transformations" was there the "respect for individual freedoms and human rights we hold as fundamental today." Marshall, as these three books make clear, played a large role in giving the Constitution its contemporary meaning. Through his opinions—particularly on the rights of the poor, the death penalty and criminal-justice matters—he helped foster the constitutional debates that have been so much a part of our political life in the last decade.

The most robust of the three books is Carl Rowan's *Dream Makers, Dream Breakers*. Rowan, author, columnist and commentator, has known Marshall for nearly 40 years, and he acknowledges at the outset that his book is "not a hostile assault" on the man. On the contrary, it is a sympathetic portrayal, though not a piece of hagiography. Rowan lets Marshall's critics have their say, but he makes sure to answer them.

While this is Marshall's story, the book in its early chapters is also a profile of the NAACP and its offshoot Legal Defense Fund. Rowan was given access to the Fund's previously closed files—from them he culls rich and illuminating information about the internal workings of the organization (which so often was strapped for money) and the personality clashes among

the NAACP leaders as they developed their attacks on segregation.

Reading Rowan, I am reminded of the legendary pianist Artur Rubinstein, who professed surprise when reviewers criticized him for skipping over notes during a performance. He couldn't understand their disapproval, for in his mind he was making music, not giving a sterile rendering of the score. Here, Rowan is telling a story, not presenting an academic treatise, and if he misses a fact or nuance in his zesty rendering, so be it. For example, he appropriately casts Strom Thurmond, who vigorously opposed Marshall's Supreme Court nomination, as a "dream breaker," but twice he incorrectly states that Thurmond walked out of the 1948 Democratic Party convention. And he mischaracterizes Thurmond's 1954 U.S. Senate race, having him campaign before segregationist White Citizens Councils a year before the first council was created in South Carolina. Similarly, the debate within the NAACP over the Clarence Thomas nomination was more complicated than Rowan's scathing broadside suggests.

Such details aside, Rowan infuses the story of Marshall's legendary career with anecdotes and information that come from his own recollections and many conversations with Marshall over the years. If at times Rowan's personal observations seem intrusive or arrogant, they add more than they interfere because he offers many good stories in the process. His chapter on a long visit with Eleanor Roosevelt is charming and poignant; his account of an almost surreal interview with a bedridden George Wallace—another "dream breaker"—is fascinating.

Several excerpts from documents seem overlong, but by and large the book doesn't bog down. It is full of well-turned phrases, some of them vividly critical. The Justice Department's case against Spiro Agnew, for instance, established "the fact that this

smarmy, hypocritically moralistic, minorities-bashing vice president was just a two-bit crook." Lamenting the appointment of Thomas to succeed Marshall on the court, Rowan declares that the "'chicken salad' days of Thurgood Marshall are over and the chicken shit has come home to roost."

Thurgood Marshall—Warrior at the Bar, Rebel on the Bench, by Michael D. Davis and Hunter R. Clark, covers the same ground as Rowan's book, but without Rowan's personal touch. Nonetheless, Davis, an Atlanta civil-rights leader and reporter, and Clark, a lawyer and writer, together present a readable account of Marshall's career. Their description of the NAACP's early days is informative; their reconstruction of Marshall's life in Harlem in the '30s is lively and instructive. So, too, is their discussion of how strategies for the *Brown v. Board of Education* litigation were shaped.

Among the most interesting chapters is the one that explores the clash between the older order—Marshall and his band of lawyers in the courtrooms—and the new generation of Martin Luther King and his followers, who took the struggle into the streets. Though Marshall was initially critical of King and his mass demonstrations—he called King an "opportunist, a 'first-rate rabble-rouser' and 'a coward'—he ultimately was willing to have the NAACP defend those who were arrested. Davis and Clark present a useful account of how the rapprochement came about.

Rowan and David and Clark discuss Marshall's work on the Supreme Court at the end of their books, going over opinions he wrote on a variety of subjects. Rowan seeks to answer critics who contend that Marshall's law clerks did most of his work by citing samples from Marshall's opinions and then matching them against Marshall's comments in extensive interviews with the author when no clerks were present.

Obviously, considerable research went into each of these books, and it is surprising that neither contains source notes, not so much to check the credibility of the writers as to assist readers and later researchers

who may want to delve into the archives themselves.

If one has read either Rowan or Davis and Clark, there is little that is new in the third book, *Thurgood Marshall: Justice for All*. Put together by Roger Goldman, a professor at the St. Louis University School of Law, and David Gallen, a New York attorney, this is a portrait of Marshall that blends reminiscences, short pieces and a discussion of Marshall's jurisprudence. The last part of the book lists 15 of Marshall's opinions and dissents.

Writing about Marshall's court work, Goldman makes the useful point that his dissents are important because "yesterday's dissent can become tomorrow's Supreme Court majority opinion." Furthermore, as he points out, other forums may be influenced by them—state supreme courts, state legislatures, the U.S. Congress and foreign countries that may be developing human rights law.

The recollections of Marshall's NAACP associate, Constance Baker Motley, provide special insights into the hurdles faced by a black woman. And four former law clerks write with affection about working for "The Judge," as Marshall preferred to be called at the high court.

The contributions Marshall made toward improving the lives of the poor and disenfranchised are monumental and beyond debate, but it is important, as these books show, to remember the effect he had on more fortunate people who came in contact with him, even if they disagreed with him and ultimately disappointed him. He served, in a way, as their conscience.

After Marshall's retirement, Justice Sandra Day O'Connor wrote that on the court Marshall pushed and prodded his colleagues—sometimes without success—to respond in their decisions "not only to the persuasiveness of legal argument but also to the power of moral truth." His fellow justice went on to say, "He is a man who sees the world exactly as it is and pushes on to make it what it can become. . . . No one could avoid being touched by his soul." ■

Books of The Times

Thurgood Marshall, on the Bench and Off

By HERBERT MITGANG

Thurgood Marshall, who was chosen to administer the oath of office to Vice President-elect Al Gore today, is the subject of two biographies about his remarkable career. Both books add to the portrait of the first black to serve as an Associate Justice of the United States Supreme Court. Even more important, they describe a personal history that parallels the fulfilled and unfulfilled aims of the struggle for civil rights by legal means in the last half-century.

Justice Marshall, who retired in 1991, was appointed to the bench in 1967 by President Lyndon B. Johnson. Both biographies devote a good deal of attention to President Bush's appointment of Clarence Thomas, the second black to sit on the Supreme Court. The contrast between the two men as jurists — one a liberal, the other a conservative — is sharply drawn by the authors of both books.

"Dream Makers, Dream Breakers," by Carl T. Rowan, a syndicated columnist and longtime friend of Justice Marshall, is an insider's view with more depth than "Thurgood Marshall," by Michael D. Davis, a journalist who was a leader of the Atlanta sit-ins in the 1960's, and Hunter R. Clark, a Harvard Law School graduate and former Time magazine

writer. Both biographies describe Justice Marshall as an irreverent individualist, combative civil rights lawyer and courageous judge who left a lasting mark on American equality, not only for blacks and other minorities but also for women and the disadvantaged.

Justice Marshall was the great-grandson of a slave and the grandson of a Union Army soldier, which made him at least as much of an American as the Southern Senators who because of his color challenged his right to become Solicitor General of the United States and then a Supreme Court Justice.

All through the book by Mr. Davis and Mr. Clark, there are stories of Justice Marshall's fighting spirit, deflecting humor and directness. When he interviewed prospective law clerks, he asked them if they liked writing dissenting opinions. "If they said no, they didn't get the job," Justice Marshall said. On and off the bench, he didn't worry about offending any people or groups, black or white. Speaking of Malcolm X last year, he said: "I still see no reason to say he is a 'great person, a great Negro.' And I ask a simple question. What did he ever do? Name me one concrete thing he ever did."

The centerpiece of "Thurgood Marshall" is his great victory as the attorney for the NAACP Legal De-

Dream Makers, Dream Breakers

The World of Justice Thurgood Marshall

By Carl T. Rowan

Illustrated. 475 pages. Little, Brown. \$24.95.

Thurgood Marshall

Warrior at the Bar, Rebel on the Bench

By Michael D. Davis and Hunter R. Clark

Illustrated. 400 pages. Birch Lane Press/Carol Publishing. \$24.95.

fense and Educational Fund Inc. in the 1954 landmark case of Brown v. Board of Education of Topeka that outlawed school segregation. The careful preparation by Justice Marshall and his staff went beyond overturning legal precedent. When Chief Justice Earl Warren wrote the unanimous decision for the Court, he cited a number of sociological sources, including Kenneth Clark's studies of the effect of segregation upon young children and Gunnar Myrdal's "American Dilemma."

In its oft-cited conclusion, the Court held: "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

In "Dream Makers, Dream Breakers," Mr. Rowan makes an important contribution to Justice Marshall's entire career by citing dozens of cases that illustrate his concerns and legal reach beyond racial matters. He was influential in getting the Supreme Court to rule the death penalty unconstitutional as it was then applied. He entered significant dissents whenever the Court extended the right to approve confessions by coercion. He wrote that the First Amendment pro-

TECTED not only freedom of expression for artists and preachers and newspapermen, but also the right of an inmate not to have his mail read by prison officials.

Justice Marshall was a strong voice for a woman's right to choose whether to carry a pregnancy to term. "I have always been in favor of women's rights, of complete and absolute equality, and that is to bring my wife down to my level," he said, in his personal lighthearted way. "I had a very independent mother. Her mother was a suffragette. She believed in that stuff. So I guess I had it beat into me."

Because of his journalistic relationship with Justice Marshall, Mr. Rowan is able to reveal many of his subject's personal views. Speaking of the Constitution, Justice Marshall says: "I think it's the greatest body of laws set out ever, and what to me, and to many people, is so extraordinary about it is that at this late date you find that it works."

Mr. Rowan often intrudes himself into this unauthorized but decidedly friendly biography. For example, writing about Justice Thomas, he says: "Over 40 years I had heard Marshall curse, in a hundred ways, 'the goddamn black sellouts.' I had no doubt what he was saying about Thomas."

But a biographer is not an autobiographer. It's too bad that Mr. Rowan didn't get Justice Marshall to say what he really thought of the Thomas selection and record on the Court in his own words. It would have made his lively "Dream Makers, Dream Breakers" an even stronger biography than it now is.

DREAM MAKERS, DREAM BREAKERS

The World of Justice Thurgood Marshall.

By Carl T. Rowan.

Illustrated. 475 pp. Boston:

Little, Brown & Company.

\$24.95.

THURGOOD MARSHALL

Warrior at the Bar, Rebel on the Bench.

By Michael D. Davis and Hunter R. Clark.

Illustrated. 400 pp. New York:

Birch Lane Press/

Carol Publishing Group. \$24.95.

By Laura Kalman

WHEN he announced his departure from the United States Supreme Court in June 1991, Thurgood Marshall expressed the hope that President George Bush would not replace him with "the wrong Negro." Surely Marshall would have preferred to surrender his seat to someone a Democratic President might have appointed. But the warrior who had won so many battles against racism could not conquer his own body. "I'm old and coming apart," he informed reporters. Asked what he planned to do in retirement, he replied, "Sit on my rear end."

Few deserved to do so more than Thurgood Marshall, who died last month at the age of 84. As head of the NAACP Legal Defense and Educational Fund for more than 20 years, a judge on the United States Court of Appeals for the Second Circuit in New York, Solicitor General of the United States, and Supreme Court Justice for nearly a quarter-century, this great-grandson of a slave had one of the most significant legal careers of the 20th century, detailed in two new biographies: "Dream Makers, Dream Breakers," by Carl T. Rowan, and "Thurgood Marshall," by Michael D. Davis and Hunter R. Clark.

• • •

From the 1930's through the 1950's, Marshall braved threats of violence from racists as he used his shoestring budget to take his traveling civil rights law office through the South. To millions, he embodied the N.A.A.C.P. "Until Marshall came, the law . . . was whatever a white lawyer or white policeman or white judge said it was," recalled one man he represented in 1946. An ingenious appellate advocate, Marshall won 29 of the 32 cases he argued before the Supreme Court. "He brought us the Constitution as a document like Moses brought the people the Ten Commandments," said

Laura Kalman, a professor of history at the University of California, Santa Barbara, is the author of "Abe Fortas: A Biography."

14 February 7, 1993

Mr. Civil Rights



Thurgood Marshall in 1965.

Juanita Jackson Mitchell, an N.A.A.C.P. official.

Marshall persuaded the Supreme Court to strike down segregation in voting, housing, public accommodations, buses, railroads, public schools and state universities. Of his most famous victory, *Brown v. Board of Education*, which in 1954 established the right of children to attend desegregated public elementary and secondary schools, Marshall said, "We hit the jackpot."

Payment was a long time coming. Though Marshall dismantled apartheid in the United States, only 2 percent of Southern schoolchildren attended integrated schools a decade after the *Brown* decision. But Marshall remained certain that the courts could bring about positive social change.

Originally he saw little to cheer in Martin Luther King Jr.'s philosophy of nonviolent direct action and dismissed King himself as "a boy on a man's errand." Marshall ultimately swung the N.A.A.C.P.'s weight behind those who engaged in civil disobedience. He never softened toward another black spokesman, Malcolm X. "What did he ever do?" Marshall once asked. "Name me one concrete thing he ever did." Marshall stands as the civil rights movement's pre-eminent liberal legal gradualist.

However, by the time his hero, Lyndon B. Johnson, named Marshall the first black Supreme Court Justice in 1967, liberalism was falling into disrepute. By the 1980's, he joked that he was in the majority on only one issue — "breaking for lunch." Yet he continued to fight against the death penalty and for the expansion of individual rights, the rights of the poor, the rights of the accused, the rights of women. More conservative justices have written of the special voice Marshall added to the Court's deliberations. His stories of his life as a civil rights lawyer forced his colleagues to confront worlds they had never known.

Describing him as "driven, sometimes compas-

sionate, but often ornery; hard-working, hard-cussing and sometimes hard-drinking; hard-to-get-along-with under pressure, self-effacing and graceful in triumph," the syndicated columnist Carl Rowan adds that Marshall was not "Mr. Humility." Neither is Mr. Rowan, who describes his book as "a document of passion and zest that will elevate the thinking and the lives of millions of people." Indeed, Mr. Rowan often seems more interested in talking about himself than about Marshall. Whole chapters, for example, explore his experiences with Eleanor Roosevelt and George Wallace.

Sometimes Mr. Rowan's prose is cute, as when he tells us that his subject as a youth

was no "Thurgoodie-two-shoes." At other times it is plain silly, as when, in speaking of the oral arguments in *Brown v. Board of Education*, Mr. Rowan announces his "respect and admiration for nine men whose bladders and brains sustained them through such endless rhetoric of passion, and even hatred."

"Dream Makers, Dream Breakers" is ahistorical Marshall's parents "lacked wealth but were not on welfare," Mr. Rowan announces. But no system of income supplements or government child support — nothing that we would now consider welfare — existed at the time. Further, Mr. Rowan employs bizarre methods of proof: he seeks to rebut a rumor that clerks wrote Marshall's opinions by engaging in the "really thrilling enterprise" of showing the substantive similarity between Marshall's off-the-cuff remarks about various legal issues and his formal written opinions. Finally, Mr. Rowan boasts of his "unprecedented access to the closed records" of the NAACP Legal Defense and Educational Fund. Apparently he is unaware that Mark Tushnet used the same materials for his fine 1987 study of the organization's legal strategy.

Michael D. Davis, the author of "Black American Women in Olympic Track and Field," and Hunter R. Clark, the author of "The Camp David Agreements," also get in the way of their stories in "Thurgood Marshall." As a former page of the Supreme Court, Mr. Clark apparently thinks that we need to know that Justice Harry A. Blackmun "liked to write with No. 2 pencils that had been shortened." The book contains its share of such banal observations: "The U.S. Supreme Court is in many ways a monastery of the intellect," the authors proclaim. This book too is ahistorical. To read Mr. Davis and Mr. Clark, one would never know how much the Supreme Court's decree implementing *Brown* "with all deliberate speed" instead of setting a definite date delayed the pace of desegregation. Fur-

ther, the book contains numerous errors, which though trivial (Lewis Kaplan for Lincoln Caplan) suggest that it was written in haste.

Where differences of interpretation arise, it is impossible to know whether to believe Mr. Rowan or Mr. Davis and Mr. Clark. By Mr. Rowan's account, to cite but one example, "Thurgood was a 'bum,' and seemed destined forever to be one" until he went to Howard University's law school and was "rescued" by Charles Hamilton Houston, the school's vice dean. In Mr. Davis and Mr. Clark's version, Marshall was a good student who "began his lifelong pursuit of equal rights" when, as an undergraduate, he desegregated a movie theater in Oxford, Pa. The

flaws in both books, along with the absence of source notes and the sketchy bibliographies, prevent either from being wholly credible.

In the years to come, biographies of Thurgood Marshall will probably become a cottage industry. Those who write them will find some use for these two books. More a memoir of the judge, whom he knew for 40 years, than a biography, Mr. Rowan's book allows us to hear Marshall speak. Mr. Davis and Mr. Clark include valuable information on Marshall's relationship with Martin Luther King Jr. But Marshall deserves better biographies. He was one of the best storytellers around, and his remains one of the best stories to be told. □

The Evening Sun

Monday, March 15, 1993

Monday Book Reviews

He did what he could

DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL. By Carl T. Rowan. Little, Brown. 457 pages. \$24.95.

THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH. By Michael D. Davis and Hunter R. Clark. Birch Lane Press. 387 pages. \$31.95.

WHEN Thurgood Marshall, the first African-American to serve on the U.S. Supreme Court, resigned in 1991, he wanted history to record that "he did what he could, with what he had." These two biographies show that Marshall, who died in January, contributed monumentally to making equal justice under the law a reality for all Americans.

**Mary
Frances
Berry**

When Marshall began to practice law in the 1930s, black Americans were legally and often forcibly segregated everywhere he looked, from theaters and restaurants to schools and courtrooms. When Marshall switched from advocacy to judging in 1961, he deserved credit for reversing those policies of exclusion. On the Court of Appeals and then on the Supreme Court, Marshall wrote more than 300 major opinions, stripping law of its racist taint in order to give more than lip service to the promises of the Constitution and the Declaration of Independence.

Along with his friend, Justice William Brennan, he was also a staunch defender of civil liberties such as privacy rights and due-process protection for people accused of crimes. Marshall also joined Brennan in fervent opposition to the death penalty on the argument that not only did it fail as a deterrent, it often failed to prosecute the guilty party, an irreversible mistake.

Syndicated columnist Carl Rowan's book benefits from his 40 years of friendship with Marshall. While Marshall was often consumed by a quest, Mr. Rowan reports, he also could be warm and fun-loving. Marshall relaxed by playing poker and spinning tales, imbibing Wild Turkey all the while, in congenial company. Mr. Rowan gives generous space to Marshall's critics, including those who hinted that as a Supreme Court justice he was intellectually deficient and lazy. But he also questions this criticism with portraits of Marshall's unlimited appetite for hard work and an explanation of his jocular phrases and acid humor; they were, the author suggests, a clever mask for his anger, not a sign of carelessness.

Mr. Rowan's fast-moving account is full of anecdotes from his conversations over the years with Marshall himself, his colleagues and friends, his supporters and detractors. Those include allies such as Eleanor Roosevelt and Hubert Humphrey, and opponents such as Strom Thurmond and George Wallace. Throughout the text, Mr. Rowan liberally sprinkles his own views on civil rights and civil liberties.

"Thurgood Marshall: Warrior at the Bar, Rebel on the Bench" covers Marshall's early life and career with more distance and reserve. The authors' most significant contribution is their explanation of Marshall's hostility toward non-violence as a strategy during the Montgomery bus boycott and the 1960s protests.

Both books chronicle Marshall's civil rights work, from prohibiting the use of restrictive covenants to exclude blacks from

housing to his crowning achievement, the 1954 victory in *Brown vs. Board of Education of Topeka* that finally consigned "separate but equal" to the dust heap of constitutional law. Both books also explain that President Kennedy appointed Marshall to the court of appeals only at the price demanded by Senate Judiciary Committee Chairman James Eastland, D-Miss.: the nomination of Eastland's segregationist college roommate to a federal district court post in the South.

President Johnson, demonstrating his leadership on civil rights after Kennedy's assassination, appointed Marshall solicitor general and then to the Supreme Court. After a grueling year-long battle for his confirmation over the opposition of segregationists led by Sen. Strom Thurmond of South Carolina, Marshall joined the court.

Marshall's health and spirits sagged when the court became conservative during the Reagan-Bush years. The death penalty was reinstated. The court rejected affirmative action to remedy job discrimination while rebuffing minority business set-asides to remedy the exclusion of blacks from government contracts. Outside the court, the persistence of de facto segregation and unequal education mocked the victory in *Brown*. After Justice Brennan stepped down in 1990, the court conferences became more difficult to bear. Hoping for a political chance, Marshall delayed his departure.

The last straw, though, was the court's 1991 decision to allow "victim impact" statements before a jury that was to decide whether someone convicted of a particularly heinous crime would get a life sentence or the death penalty. "Beyond his absolute rejection of the death penalty," Mr. Rowan writes, "Marshall found revolting the idea that a jury that already knew the character of the crime and the criminal should be emotionalized at sentencing time by relatives telling of their anguish. In his days as a lawyer, Thurgood had seen numerous black men consigned to death not by intellectual or legal considerations, but by pure racial emotion on the part of jurors."

On June 27, 1991, Marshall denounced his colleagues; later that same day, he announced his retirement for health reasons.

Mr. Rowan conveys, with elegance and directness, Marshall's joy of spirit, his easy manner, his casual grace, his way with words in court, his folksiness and his respect for professional women.

Marshall's contributions as a lawyer and judge touched most aspects of American life. Asked whether his successor should be black, Marshall answered with a proverb from his father: "There's no difference between a black snake and a white snake. They'll both bite." For those suffering from racial discrimination Marshall left the message that "You can't use race as an excuse for not doing what you should be doing."

He also admonished all Americans to join in the continuing struggle to end racism. "The legal system can force open doors, and sometimes, even knock down walls," he noted. "But it cannot build bridges . . . We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same . . . Knock down the fences that divide. Reach out; freedom lies just on the other side."

Mary Frances Berry is professor of history at the University of Pennsylvania and a member of the U.S. Commission on Civil Rights.